

ORIGINAL
FILE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Redevelopment of Spectrum to)
Encourage Innovation in the)
Use of New Telecommunications)
Technologies)

ET Docket No. 92-9

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APR 30 1992

To: The Commission

Federal Communications Commission
Office of the Secretary

**REPLY TO TWT'S OPPOSITION
TO PETITION TO SUSPEND PROCEEDING**

THE ASSOCIATION OF AMERICAN RAILROADS ("AAR"), LARGE PUBLIC POWER COUNCIL ("LPPC") and AMERICAN PETROLEUM INSTITUTE ("API") (collectively "Petitioners"), by their attorneys and pursuant to Sections 1.41 and 1.45 of the Commission's Rules, hereby submit a Reply to the Opposition filed by Time Warner Telecommunications, Inc. ("TWT") to Petitioners' Petition to Suspend Proceeding.^{1/}

^{1/} On April 24, 1992, Petitioners filed a Reply to an Opposition to Petition to Suspend Proceeding filed April 20, 1992, by American Personal Communications ("APC"). Subsequently, on April 27, 1992, after the deadline for Oppositions, Petitioners were served with TWT's Opposition. Because TWT's Opposition was received after Petitioners filed their Reply to APC, Petitioners now supplement that Reply with this pleading responsive to TWT's Opposition and hereby incorporate all arguments in that Reply.

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List A B C D E

I. Suspension of this Proceeding Will Not Delay Deployment of PCS.

Like APC, TWT supports Petitioners' request that the FCC initiate formal efforts with the National Telecommunications and Information Administration ("NTIA") to make federal government spectrum available in this proceeding. TWT Opposition at 3. TWT also supports Petitioners' request that the FCC's Office of Engineering and Technology ("OET") analyze the 1710-1850 and 2200-2290 MHz federal bands in the same manner that it analyzed the 2 GHz band targeted for reallocation. *Id.* at 4, 6. TWT objects, however, to suspension of the rulemaking in order to undertake these steps, claiming that suspension would delay deployment of personal communications services ("PCS").

As stated at pages 4-6 and 8 of Petitioners' Reply to APC, suspension of this proceeding to consider use of federal government spectrum has the potential to expedite, rather than delay, deployment of PCS. It is unsound administrative policy, and wasteful use of the Commission's and the parties' resources, to proceed with the rulemaking concurrent with investigating use of federal spectrum, as TWT suggests. TWT Opposition at 5. *See* Petitioners' Reply to APC's Opposition at 2-6.

II. TWT Fails to Substantiate "Economies of Scale" Claim.

TWT claims that deployment of PCS should not be delayed because foreign competitors have obtained a "head start" over U.S. corporations in the PCS market and enjoy a "competitive advantage [that] is heightened by the significant international economies of scale" foreign companies are able to realize. TWT

Opposition at 7-8. TWT offers no specific evidence or documentation of these purported international "economies of scale." Nor does it explain why U.S. corporations cannot now sell equipment in foreign markets where PCS is being deployed. In any event, as explained in Part I, granting Petitioners' request to temporarily suspend this proceeding will not delay deployment of PCS or disable U.S. corporations from competing internationally. TWT's bald, unsubstantiated assertion to the contrary should be rejected.

III. Co-Primary Status Does Not Meet Incumbents' Needs.

As Petitioners emphasized in their Petition to Suspend Proceeding, the use of federal government spectrum for emerging technologies and/or for a home for displaced 2 GHz users can eliminate the costly and disruptive relocation contemplated in the Commission's current proposal. To avoid having the FCC take the logical first step of investigating use of federal spectrum before proceeding with its more burdensome proposal, TWT attempts to minimize the impact of the Commission's proposal. TWT refers to the FCC's "generous transition plan" that permits incumbent licensees to occupy the 2 GHz band as co-primary users with PCS and other undefined emerging technologies. TWT Opposition at 9.

As the Commission has failed to do, so, too, has TWT failed to explain how it will be feasible for incumbent fixed microwave users to share spectrum with PCS. Given that the Commission has

not articulated the interference criteria for PCS, or even identified which other technologies also will occupy the 2 GHz band, it is disingenuous for TWT to claim that incumbent microwave users "will enjoy adequate interference protection throughout the period they occupy the 2 GHz spectrum." Id.

The electric utilities, railroads and petroleum industries use fixed microwave systems to provide a real-time operational monitoring and remote control capability for systems used in the transmission and delivery of electricity, petroleum and natural gas, and for the provision of rail transportation throughout the nation. The microwave communications systems are critical elements in the safe and reliable functioning of these operations -- any interference to these systems creates a threat to public safety. Accordingly, until interference criteria of PCS and other emerging technologies are identified, the FCC's hollow promise of co-primary status does nothing to minimize the impact of the reallocation proposal. Use of federal spectrum, on the other hand, could make this and other issues moot. See Petitioner's Reply to APC's Opposition at 5.

IV. CONCLUSION

For the foregoing reasons, Petitioners respectfully submit that their Petition to Suspend Proceeding should be granted.

Respectfully submitted,

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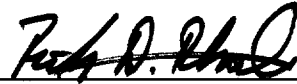
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CERTIFICATE OF SERVICE

I, Jaime Y.W. Bierds, a secretary for the law firm Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, do hereby certify that a true and correct copy of the foregoing "Reply to TWT's Opposition to Petition to Suspend Proceeding" was delivered by hand, this 30th day of April, 1992, to the following:

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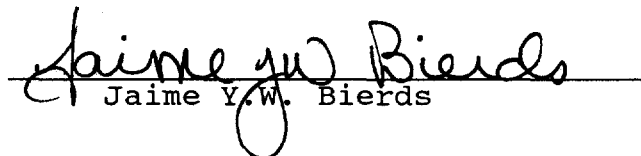
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